The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte MICHAEL F. TOMPSETT

Application No. 08/625,445

ON BRIEF

Before Garris, Lieberman, and Kratz, <u>Administrative Patent Judges</u>.

Lieberman, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the decision of the examiner refusing to allow claims 13 through 16. Claim 17 stands withdrawn from consideration as being drawn to a non-elected invention. 37 CFR § 1.142(b). See the Final Rejection dated June 6, 1997.

THE INVENTION

The invention is directed to a process for producing a speckled particle by spraying a dyestuff and an acrylic acid copolymer having a molecular weight of about 3,000 to about 4,500 onto a hygroscopic particle. A coated particle is thereby formed and dried. The invention is further directed to a specific ratio of hygroscopic particle. A coated particle is thereby formed and dried. The invention is further directed to a specific ratio of hygroscopic particle. A coated particle is thereby formed and dried. The invention is further directed to a specific ratio of hygroscopic particle. A coated particle is thereby formed and dried. The invention is further directed to a specific ratio of hygroscopic particle. A coated particle is thereby formed and dried. The invention is further directed to a specific ratio of hygroscopic particle. A coated particle is thereby formed and dried. The invention is further directed to a specific ratio of hygroscopic particle. A coated particle is thereby formed and dried. The invention is further directed to a specific ratio of hygroscopic particle. A coated particle is thereby formed and dried. The invention is further directed to a specific ratio of hygroscopic particle. A coated particle is thereby formed and dried. The invention is further directed to a specific ratio of hygroscopic particle. A coated particle is the result in the coated particle is the result in

THE CLAIM

Claim 13 is illustrative of appellant's invention and is reproduced below.

13. A process for producing a speckle particle for use in a detergent composition comprising the steps of:

(I) spraying an aqueous organic binder mixture comprising an acryl**izopoly**mer having an average molecular weight of from about 3,000**6/dibbou**t a dyestuff onto a hygroscopic base particle to form a coated particle; and (ii) drying said coated particle to obtain said speckle particle;

wherein the weight ratio of said hygroscopic base particle to said dyestuff in said speckle particle is from about 1,000:1 to about 50:1, expressed weight dues is

THE REFERENCE OF RECORD

As evidence of obviousness, the examiner relies upon the following reference.

Baldassin 4,721,633 Jan. 26, 1988

THE REJECTION

Claims 13 through 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Baldassin

OPINION

We agree with the appellant that the rejection under 35 U.S.C. § 103(a) is not well founded. Accordingly, we do not sustain this rejection.

The Rejection under 35 U.S.C. § 103

(Ti) he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a <u>prima facie</u> case of unpatentability," whether on the grounds of anticipation or obviousness. <u>In re Oetiker</u>, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). On the record before us, the examiner relievely reference to Baldassin to reject the claimed subject matter and establish a <u>prima facie</u> case of obviousness. The basic premise of the rejection is that although Baldassin differs from the claimed subject matter in disclosing a molecular weight for acrylic acid polymers high than that of the claimed subject matter, the reference to Baldassin or reject the claimed subject matter in disclosing a molecular weight for acrylic acid polymers high than that of the claimed subject matter.

"suggestive of lower molecular weights." See Answer, page 4. In addition, it is the examiner's position that "the reference is clearly suggestive of molecular weights outside the range." See Answer, page 5. We disagree.

Assuming arguendo that Baldassin could be construed as disclosing or suggesting each of the other limitations of the claimed subject matter, claim 13 nonetheless requires the presence of "an actylic acid copolymer having an average molecular weight of from about 3,000 to about 4,500." The examiner relies upon colured of the specification which states,

tithe polyacrylic acid employed will preferably be of higher molecular weight, normally being of a weight average molecular weight in the range of 10,000 to 100,000, preferably 40,000 to 80,000 and more preferably about 60,000

as disclosing average molecular weights of less than 10,000. See Answer, page 4. In our view, the statement in Baldassin reflects a preference for polyacrylic acid having a molecular weight in excess of the stated minimum. Moreover, our view is supported by reference to the examples, each of which utilize a polyacrylic acid having a molecular weight in excess of the stated minimum. Moreover, our view is supported by reference to the examples, each of which utilize a polyacrylic acid having a molecular weight in excess of the stated minimum. Moreover, our view is supported by reference to the examples, each of which utilize a polyacrylic acid having a molecular weight in excess of the stated minimum. Moreover, our view is supported by reference to the examples, each of which utilize a polyacrylic acid having a molecular weight in excess of the stated minimum. Moreover, our view is supported by reference to the examples, each of which utilize a polyacrylic acid having a molecular weight in excess of the stated minimum. Moreover, our view is supported by reference to the examples, each of which utilize a polyacrylic acid having a molecular weight of 60,000. See Formula 1A through 1D, in the Table bridging columns 9 and 10.

Based upon the above considerations, the examiner has not established a <u>prima facie</u> case of obviousness and the examiner's rejection of claims 13 through 16 as unpatentable over Baldassin is not sustained. Accordingly, we have determined that the examiner's legal conclusion of obviousness is not supported by the legal

conclusion [of obviousness] is not supported by the facts it cannot stand." In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967).

DECISION

The rejection of claims 13 through 16 under 35 U.S.C. § 103(a) as being unpatentable over Baldassin is reversed.

REVERSED

BRADLEY R. GARRIS Administrative Patent Judge))))
PAULLIEBERMAN	APPEALS) BOARD OF PATENT
Administrative Patent Judge) AND) INTERFERENCES

PETER F. KRATZ

Administrative Patent Judge

PL:tdl

Ken K. Patel The Procter and Gamble Company 5299 Spring Grove Avenue Cincinnati, OH 45217